

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL OTH 1/2024
(Please use this reference in your reply)

15 January 2024

Dear Mr. Tatar,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 52/9.

In this connection, I would like to bring to your attention information I have received **concerning alleged judicial harassment, intimidation and censorship of journalist Mr. Ali Kışmir.**

Mr. Ali Kışmir is a Turkish Cypriot journalist and the President of the Cypriot Press Workers' Union (Basın-Sen), an affiliate of the European and International Federations of Journalists (EFJ-IFJ). Mr. Kışmir is well known for his criticism of the Turkish Cypriot leader, Mr. Ersin Tatar, and is allegedly targeted frequently by both Turkish authorities and by Turkish Cypriot authorities as a result of his journalistic work.

According to information received:

Mr. Kışmir's journalistic work has been subjected to censorship, and he has been targeted by both the Turkish and the Turkish Cypriot authorities several times. During the elections for the Turkish Cypriot leadership held in 2020, Turkish Government officials allegedly called him out as "an enemy of Turkey" and a "traitor".

On 15 August 2020, Mr. Kışmir published an article in the daily newspaper *Afrika*, alleging that Turkish officials held a secret meeting at the headquarters of the Security Forces Command, *Güvenlik Kuvvetleri Komutanlığı* (GKK) with members of the National Unity Party, *Ulusal Birlik Partisi* (UBP), and members of the National Intelligence Organization of Türkiye, *Millî İstihbarat Teşkilatı* (MIT). In the article, the journalist described the meeting as a "brothel where the will of Turkish Cypriots is sold and bought" and criticised the Turkish government and the Turkish security forces in the northern part of Cyprus for interfering in the affairs of the Turkish Cypriot people.

On 10 October 2021, Mr. Kışmir was denied entry to Türkiye. He was allegedly taken to detention room in Istanbul airport where his picture and fingerprints were taken by Turkish officials. He was then deported by Turkish authorities to the northern part of Cyprus.

On 22 February 2022, the "Chief Prosecutor's Office" filed charges before the "High Criminal Court" against Mr. Kışmir for allegedly "insulting and defaming the moral personality" of the security forces in the northern part of Cyprus, a charge that could lead to a sentence of up to 10 years in prison if found guilty under Article 26 of the "Military Crime and Penalty Law".

Mr. Kışmir was expected to appear in court on 28 February 2022, but the initial hearing was not held, allegedly due to public pressure.

In June 2023, Mr. Kışmir was forced to resign from the online channel TV20 due to political pressure, following the publication that same month of an article critical of Mr. Tatar. Following the censorship of his article, the channel's directors put a stop to his television programmes.

In August 2023, the Turkish Cypriot authorities notified Mr. Kışmir that his case was being called to trial, which was due to begin on 6 October 2023 before the Nicosia District Court in the northern part of Cyprus. Upon the request of Mr. Kışmir's lawyer, the trial date was postponed to 27 October 2023. The court granted Mr. Kışmir bail and ordered him to sign 30,000TL (approximately \$1,117 USD) as a guarantee that he would be present at the next hearing. On 27 October 2023, Mr. Kışmir's trial was postponed for another four weeks to allow for negotiations between Mr. Kışmir's lawyer and the "Chief Public Prosecutor" regarding the case.

On 27 November 2023 the hearing was due to take place before the "Nicosia District Court" in the northern part of Cyprus, to determine if and when the case will be tried in the High Criminal Court, was postponed for the third time. Another hearing, scheduled for 27 December 2023, was again postponed until 24 January 2024.

Without wishing to prejudge the accuracy of the above-mentioned allegations, I am concerned the judicial harassment, intimidation and censorship of Mr. Kışmir comes as a direct result of his journalistic work expressing his political views and criticism of Turkish authorities and Turkish Cypriot authorities. I note with concern the consistent pattern of intimidation against Mr. Kışmir since the publication of the above-mentioned article in August 2020, including his denial to enter Türkiye by the Turkish authorities and subsequent deportation back to the northern part of Cyprus in October 2021.

I am concerned that the targeting of Mr. Kışmir appears to be part of a wider crackdown against dissenting voices within the Turkish Cypriot community, especially with respect to Turkish Cypriot journalists. I am concerned that the judicial harassment and targeting of Mr. Kışmir is an attempt by authorities to silence press and intimidate journalists, in clear violation international human rights standards, including the right to freedom of opinion and expression. I am further concerned that the forced dismissal from the TV channel and censorship of Mr. Kışmir appear to be acts of intimidation aimed at silencing critical voices. These acts of intimidation and censorship raise questions about the state of press freedom and freedom of expression in the northern part of Cyprus. I am particularly concerned about the possible chilling effect these acts have on the ability of all media and journalists in the region to carry out their work.

I also express our concern about the mental and physical health and well-being of the Mr. Kışmir as the court proceedings continue to be extended and given his recent dismissal from work.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which

cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please provide a detailed account of the legal and factual grounds for the charges against Mr. Ali Kışmir and how this complies with international human rights standards, specifically article 19 of the Universal Declaration of Human Rights, relating to the right to freedom of expression.
3. Please provide information on the alleged censorship of Mr. Ali Kışmir work by relevant Turkish Cypriot authorities and explain how this is compatible with international standards on freedom of expression and media freedom.
4. Please provide any information you may have on the factual and legal grounds for Mr. Ali Kışmir being denied entry to Türkiye and the subsequent deportation from Istanbul Airport on 10 October 2021.
5. Please provide any information you may have on the alleged interference by the office of the Turkish Cypriot leader in relation to Mr. Ali Kışmir's dismissal. Please outline how the relevant Turkish Cypriot authorities ensure there is no political interference by government authorities in the free press.
6. Please provide information on how the relevant Turkish Cypriot authorities protect the freedom of expression, including of dissenting voices and critics of the current government, so that they can work in a safe and enabling environment free from fear of threats, intimidation, prosecution, criminalization and deprivation of liberty.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with you to clarify the

issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the Permanent Mission of Türkiye.

Please accept, Mr. Tatar, the assurances of my highest consideration.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer the attention of the relevant Turkish Cypriot authorities to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), which is effectuated via local legislation in the northern part of Cyprus.

Under article 19 of the ICCPR and article 19 of the Universal Declaration of Human Rights, which guarantees the right to freedom of opinion, and the right to freedom of expression, subject to the strict limitations of Article 19 paragraph 3. The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, which not only applies to information that is favourable, but also to information that may shock or offend. In its general comment no. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’. Article 19 requires the States to guarantee the right to freedom of expression (Id.). It is the States’ duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23).

In addition, the Human Rights Council resolution 12/16, which called on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms. Furthermore, Human Rights Council Resolution 12/16 calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Finally, I draw your attention to article 12 of the ICCPR which guarantees that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement” and Article 13 of the UDHR states that (1) everyone has the right to freedom of movement and residence within the borders of each state and (2) everyone has the right to leave any country, including his own, and to return to his country. As stated in general comment No. 27 of the Human Rights Committee, the question of whether an alien is “lawfully” within the territory of a State is a matter

governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided that they are compatible with the State's international obligations. An alien who entered the State illegally, but whose status has been regularized, even on a temporary basis, must be considered to be lawfully within the territory for the purpose of article 12 of the ICCPR.